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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR    | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-------------------------|---------------------|------------------|
| 09/901,688      | 07/11/2001  | Delphine Verdrel-Lahaxe | 209872US0           | 8963             |

22850 7590 06/11/2003

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[REDACTED] EXAMINER

MRUK, BRIAN P

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

1751

DATE MAILED: 06/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

|                             |                        |                       |  |
|-----------------------------|------------------------|-----------------------|--|
| <b>Offic Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b>   |  |
|                             | 09/901,688             | VERDREL-LAHAXE ET AL. |  |
|                             | <b>Examiner</b>        | <b>Art Unit</b>       |  |
|                             | Brian P Mruk           | 1751                  |  |

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 21 November 2001.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-25 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                 | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4 &amp; 6</u> . | 6) <input type="checkbox"/> Other: _____ .                                   |

**DETAILED ACTION**

***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. The Markush listing in instant claim 16 renders the claim vague and indefinite. Specifically, the examiner notes that the group "polyalkylene glycol ether of fatty alcohol" is a nonionic surfactant, and thus, should not be listed as an anionic surfactant. Appropriate correction and/or clarification is required.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

6. Claims 1-24 are rejected under 35 U.S.C. 102(a) as being anticipated by Koike et al, EP 1,051,964.

Koike et al, EP 1,051,964, discloses a cosmetic composition comprising 1-80% by weight of a water soluble polymer (see page 3, lines 8-10), 10-80% by weight of a nonaqueous solvent, such as polyethylene glycol 400 (see page 3, lines 11-18), 10-60% by weight of at least one component that generates heat, such as zeolite A, calcium chloride, and magnesium chloride (see page 3, lines 23-43), and 1-80% by weight of at least one surfactant, such as alkylglycosides, alkylphosphates, and acylsethionates (see page 3, line 43-page 4, line 1), per the requirements of the instant invention. It is further taught by Koike et al that the cosmetic composition may be in lotion, cream, paste or solid form (see page 4, lines 15-19), and that the cosmetic composition is used in a process to clean skin comprising massaging the composition onto dry or wet skin, lathering, and removing from the skin with rinsing (see page 4, lines 20-32). Furthermore, note that Koike et al disclose with sufficient specificity that the component that generates heat includes combinations of zeolites, calcium chloride, and magnesium chloride, per the requirements of the instant invention (see page 3, lines 37-40). Therefore, instant claims 1-24 are anticipated by Koike et al, EP 1,051,964.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Koike et al, EP 1,051,964, in view of McAtee et al, U.S. Patent No. 6,153,208.

The primary reference of Koike et al, EP 1,051,964, is relied upon supra as disclosing a cosmetic composition comprising 1-80% by weight of a water soluble polymer (see page 3, lines 8-10), 10-80% by weight of a nonaqueous solvent, such as polyethylene glycol 400 (see page 3, lines 11-18), 10-60% by weight of a combination of components that generate heat, such as zeolite A, calcium chloride, and magnesium chloride (see page 3, lines 23-43), and 1-80% by weight of at least one surfactant, such as alkylglycosides, alkylphosphates, and acylsethionates (see page 3, line 43-page 4, line 1). Koike et al does not disclose an article that contains the cosmetic composition in a water-insoluble substrate, per the requirement of instant claim 24.

The secondary reference of McAtee et al, U.S. Patent No. 6,153,208, discloses a cleaning and conditioning article for skin and hair comprising a personal cleaning composition sorbed onto a disposable cleansing article (see abstract). It is further taught by McAtee et al that the disposable cleaning article includes a water-insoluble substrate, such as washcloth, and that the water-insoluble substrate enhances lathering capabilities, increases cleansing and exfoliation, and optimizes delivery and consistent deposition of the cleansing composition (see col. 2, line 65-col. 3, line 57).

Therefore, in view of the teachings of the secondary reference of McAtee et al, one having ordinary skill in the art would be motivated to modify the primary reference of Koike et al by incorporating the cosmetic composition taught by Koike et al into the water-insoluble substrate taught by McAtee et al, to enhance the lathering capabilities, to increase the cleansing and exfoliation, and to optimize the delivery and consistent deposition of the cosmetic composition. Such modification would be obvious because one would expect that the use of the water-insoluble substrate, as taught by McAtee et al, would be similarly useful and applicable to the analogous cosmetic composition taught by Koike et al.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (703) 305-0728. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (703) 308-4708. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310 (Before Final) and (703) 872-9311 (After Final).

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

BPM

Brian Mruk  
June 6, 2003

Brian P. Mruk

Brian P. Mruk  
Patent Examiner  
Tech Center 1700